DEPARTMENT OF STATE REVENUE

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Letter of Findings: 41-20210150; 42-20210149
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Assessments
For the Years 2018 to 2021

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department was unable to agree that Motor Carriers were entitled to an abatement of additional IRP fees and IFTA tax but found that a review of additional mileage documentation, provided after the audit was completed, was justified. The Department did agree that the IFTA penalty should be abated because Motor Carriers' failure to maintain detailed mileage records was not due to willful negligence.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Abatement.

Authority: IC § 6-6-4.1-4; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 9-28-4-6; IFTA Procedures Manual § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual § P550.100 (2017); IRP § 1005 (2019); IRP § 1015 (2019); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.,* 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); International Fuel Tax Agreement, https://www.iftach.org/manual2020.php.

Taxpayers argue that they are entitled to an unspecified abatement of the IFTA tax and IRP fees because additional information, provided after the audit was completed, justifies the adjustment.

II. International Fuel Tax Agreement Tax - Penalties.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IFTA Articles of Agreement § R1220.100; IFTA Procedures Manual § P550.100 (2017); 45 IAC 15-11-2.

Taxpayers seek abatement of the penalties associated with the imposition of additional IFTA tax.

STATEMENT OF FACTS

Taxpayers are two sister motor carriers both of which operate from and are headquartered at the same Indiana location. Both companies are owned and operated under the same management. Publicly available information indicates that one of the carriers has 25 employees. That same public information indicates that one of the companies operates 36 trucks, owns 130 trailers, and employs 35 drivers. Both carriers transport general freight, flatbed steel, metal sheeting, prefabricated steel buildings, and lumber. Both carriers provide transport services in all the lower 48 states and in Canada. Taxpayers' vehicles travel Indiana highways and interstate highways in providing those hauling services.

Taxpayers chose Indiana as their base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and for purposes of the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2019 IFTA taxes and additional 2019 and 2020 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayers disagreed with the IFTA and IRP assessments on the ground that the Department should now consider additional documentation not available during the course of the original audit.

Taxpayers submitted a protest outlining their objections. Along with its protest submission, Taxpayers provided additional mileage documentation which - according to Taxpayers - was unavailable during the initial audit review. That documentation was contained in an Excel file providing "new mileage information on our trucks for the period 2019." This information was marked with a "time/date stamp with the actual odometer reading" for each of Taxpayers' vehicles. Although Taxpayers admit that they "did not capture required trip information . . . due to not recording actual odometer readings after each trip."

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Abatement.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayers' "records presented for audit were not compliant and . . . rated as inadequate." The audit report states that although Taxpayers maintained trip reports, "[N]o process was in place to check them for the required appropriate conduct." The audit report explains further:

> The beginning/ending trip odometer readings, routes of travel and total distance were not recorded by the drivers on the trip reports. No process was in place to verify the accuracy of the trip distance or to check the trip information for continuity. No procedure was in place for ensuring distance and fuel were reported in the same quarter . . . . No procedure was in place for validating tax paid fuel credits.

In effect, the Department - representing Indiana as Taxpayers' "base jurisdiction" - was unable to accurately determine the proper amount of tax owed Indiana or any of the other jurisdictions in which Taxpayers' vehicles traveled or may have traveled during 2019.

The audit report cites to the authority for assessing additional IFTA taxes:

> As required by the IFTA Procedures Manual, Article P570.100 Inadequate Records Assessment, if the base jurisdiction determines that the records produced by licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set forth in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces, the base shall impose an additional assessment by either:
>
> .005 Adjusting the licensee's reported MPG to 4.00 or 1.70 KPL; or
> .010 Reducing the licensee's reported MPG or KPL by **twenty percent**. (**Emphasis added**).

The audit report explains the results:

> In accordance with IFTA Article P570.100 Inadequate Records Assessment . . . the **reported MPGs were multiplied by 20[percent]** to determine the MPG reductions. The MPG reductions were subtracted from the reported MPGs to determine the audited MPGs for each quarter. (**Emphasis added**).

As a result, and based upon the limited information available, the Department concluded that Taxpayers owed approximately $70,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately $10,000 in interest and $7,000 in penalties.

1. Taxpayers' Burden of Establishing That the IFTA Assessment Should be Abated.

As a threshold issue, it is Taxpayers' responsibility to establish that the existing proposed penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

2. IFTA Requirements and Taxpayers' Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.iftach.org/manual2020.php (last visited December 21, 2021). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayers. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayers are headquartered in Indiana and plainly operated vehicles in Indiana. As such, Taxpayers operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayers were subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id*. The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Department here will not belabor the point but as an Indiana licensee, Taxpayers are subject to the specific, detailed reporting requirements under the IFTA.

The IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.

(**Emphasis added**).

In addition, the IFTA Procedures Manual at § P550.100 (2017), imposes upon IFTA licensees the responsibility of maintaining and then making available verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). The IFTA Procedures Manual, § P510 (2017) provides in part that:

> A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. **A licensee must preserve all fuel and distance records** for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

(**Emphasis added**).

Exercising its authority and responsibility as the Taxpayers' chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

3. Taxpayers' Objections to IFTA Assessment and Request to Abate that Assessment.

Taxpayers point out that they are "being charged 20[percent] of our original tax for not maintaining odometer readings for the trips that our trucks took back in 2019." Taxpayers explain that it employs a vendor, Omnitracs, to retain all necessary records. Taxpayers explain that under their agreement Omnitracs provides "tracking, ELD

[Electronic Log Devices], and telematics software to keep all of this information for us." When asked by the Department's audit to provide the requested information, Taxpayers found that Omnitracs "only keep[s] this information for six months." Taxpayers state that they were unaware of Omnitracs practice "and we realize this is a problem when it comes to record keeping."

B. Indiana's IRP Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayers' travel records and determined that Taxpayers owed additional 2019 and 2020 IRP fees. The assessment of the approximately $14,000 amount was made because "[t]he records presented for audit were not compliant and have been rated as inadequate."

The IRP audit report explained:

> Though trip reports were maintained, no process was in place to check them for the required appropriate content. The beginning/ending trip odometer readings, routes of travel and total distance were not recorded by the drivers on the trip reports.

1. IRP Requirements and Taxpayers' Record Keeping Responsibilities.

The Indiana Code permits Indiana to join the IRP agreement ("the Plan") under IC § 6-6-4.1-14 and IC § 9-28-4-6. IC § 6-6-4.1-14(b) states in relevant part:

> The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter . . . .

IC § 9-28-4-6 states in relevant part:

(a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.
(b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Although Taxpayers operated vehicles in Indiana and other states, Taxpayers specifically chose Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plan's Audit Procedures Manual.

The Department selected April 2019 to March 2020 as the registration year to audit. The Department determined that Taxpayers owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2019) explains that:

(a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.
(b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

§ 1015 of the Plan (2019) goes on to provide in part that:

> If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of **twenty percent of the Apportionable Fees** paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain.

(**Emphasis added**).

As with the IFTA tax audit noted above, Department's audit found that Taxpayers' records "were not compliant and have been treated as inadequate." As a result, the Department's audit resorted to § 1015 of the Plan (2019) to impose a 20 percent assessment of the apportionable IRP fees.

2. Taxpayers' Burden of Establishing that the IRP Fees Should be Abated.

It should be pointed out that, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

It is Taxpayers' responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete, detailed source documentation, the Department's additional assessment of IRP fees, based upon § 1015 of the Plan (2019), is reasonable and supported by law and the Plan and its Audit Procedures Manual. Taxpayers bear the burden of proving that any specific portion of the assessment or audit analysis is incorrect, and Taxpayers have failed to meet that burden. IC § 6-8.1-5-1(c); *Lafayette Square,* 867 N.E.2d at 292.

C. Conclusions.

The Department reviewed the additional documentation provided along with Taxpayers' protest submission. That supplemental documentation is described in detail above. The information provided does not fully resolve the Department's concerns because the mileage figures are cumulative for each truck and do not document mileage traveled for each trip. Taxpayers argue that the supplemental information is useful and adequately documents the mileage traveled in each jurisdiction.

The Department agrees that the additional information is relevant and should be taken into consideration upon review of the original audit conclusions. Taxpayers' record keeping practices - as they well recognize - fall short of the relevant IFTA and IRP requirements. Taxpayers have not met that burden of establishing that the assessments were wrong as required under IC § 6-8.1-5-1(c).

However, the Department recognizes Taxpayers' efforts to provide additional mileage information and requests that the Department's Motor Carrier Department consider that information and make whatever adjustments are warranted.

In other words, the circumstances, IFTA, and IRP have not changed; the Department correctly found Taxpayers then-current record keeping inadequate, and Taxpayers have failed to meet their statutory or regulatory burden of establishing otherwise. The Department does not agree that the IFTA or IRP liabilities should be abated. However, that does not foreclose a review of Taxpayers' supplemental mileage documentation and an adjustment to the IFTA and IRP assessments as called for by that review.

FINDING

Taxpayers' protest is respectfully denied.

II. International Fuel Tax Agreement Tax - Penalties.

DISCUSSION

Taxpayers ask the Department to exercise its authority to abate the penalties associated with the IFTA assessment. Taxpayers state that they relied on their vendor to maintain detailed mileage and fuel information and that they were taken aback when they found that the vendor deleted the information after six months.

As with any assessment made by the Department, it is a taxpayer's responsibility to establish that the penalty assessment was wrong. IC § 6-8.1-5-1(c) provides, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

In addressing Taxpayers' request, the Department refers to IFTA Articles of Agreement § R1220.100, which states:

> The base jurisdiction may assess the licensee a penalty of $50.00 or 10 percent of delinquent taxes, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due.

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard, or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), as follows:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to **reasonable cause** and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised **ordinary business care** and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
> (1) the nature of the tax involved;
> (2) judicial precedents set by Indiana courts;
> (3) judicial precedents established in jurisdictions outside Indiana;
> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
> (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

(**Emphasis added**).

IC § 6-8.1-10-2.1(d) explains that "[i]f a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

"Reasonable cause" is a fact sensitive question and thus is dealt with according to the particular facts and circumstances of each case.

The Department recognizes Taxpayers' efforts to correct its record-keeping shortcomings but emphasizes that it is Taxpayers' - and not its vendor's - responsibility to preserve and retain those records. IFTA Procedures Manual at § P550.100 (2017). Nonetheless, Department concludes that Taxpayers "exercised ordinary business" in maintaining records required under the IFTA or Indiana's record keeping requirements. There is no indication that the record-keeping shortcomings were attributable to Taxpayers' "willful neglect." IC § 6-8.1-10-2.1(d).

FINDING

Taxpayers' protest is sustained.

SUMMARY

The Department does not agree that the IFTA and IRP assessments should be abated but does agree that the Department should review the supplemental documentation and make whatever adjustments are warranted. The Department agrees that the IFTA penalty should be abated.

December 28, 2021

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